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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN JOSE DIVISION

18 CISCO SYSTEMS, INC.,

19 Plaintiff,

20 v.

21 ARISTA NETWORKS, INC.,

22 Defendant.
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Case No. 5:14-cv-05344-BLF (NC)

**DEFENDANT ARISTA'S OBJECTIONS
TO PLAINTIFF CISCO'S 11/30/16 TRIAL
EXHIBITS AND DEMONSTRATIVES**

Dept.: Courtroom 3 – 5th Floor
Judge: Hon. Beth Labson Freeman

Date Filed: December 5, 2014

Trial Date: November 21, 2016

1 Arista objects as follows to November 30 trial exhibits, demonstratives, and witnesses.

2 **Prakash Bettadapur:** Arista objects to Cisco calling Prakash Bettadapur as a witness. If
 3 the Court permits him to testify, he should be precluded from testifying on any copyright-related
 4 issues (*e.g.*, TX 5458-60). During discovery, Cisco only identified Mr. Bettadapur as
 5 knowledgeable about the '886 patent. Ex. A at 2 (Cisco's Init. Discl.). Arista had no reason to
 6 investigate Mr. Bettadapur's personal knowledge on any other subject, and therefore did not do
 7 so. With the '886 patent claim now dismissed, Mr. Bettadapur is not a proper trial witness.

8 On its trial witness list, Cisco identifies Mr. Bettadapur on two topics: (1) "[u]se of the
 9 '526 patented technology in Cisco's products"; and (2) "the importance of the '526 patent
 10 technology for creating extensible operating systems." ECF 593-1 at 2.

11 On the first topic, while Mr. Bettadapur was designated on this topic as a 30(b)(6) witness,
 12 he disclaimed any "firsthand knowledge." Ex. B at 65. He therefore cannot testify to this topic at
 13 trial. *VIIV Healthcare Co. v. Mylan Inc.*, 2014 WL 2195082, at *2 (D. Del. 2014) (barring
 14 parties' 30(b)(6) testimony at trial, where they "failed to demonstrate that their witnesses'
 15 deposition testimony relies on personal knowledge"). He did not know which Cisco products
 16 practice the '526 patent, where particular requirements of the '526 patent could be found in
 17 Cisco's products, or how the '526 technology ended up in Cisco products. *See* Ex. B at 65–70.
 18 Thus, Cisco should be barred from testifying about how it practices the '526 patent.

19 On the second topic, Mr. Bettadapur was *in no way* disclosed on this issue during
 20 discovery. Moreover, it is clear from the documents identified, and from Cisco's counsel, that
 21 Cisco intends to elicit testimony on copyright-related issues. This is both completely undisclosed
 22 testimony and, in any event, improper opinion testimony from a lay witness. *See* FRE 701.

23 **Almeroth Demonstratives:** Arista objects to slides 32 to 42, slides 44 to 51, slides 72 to
 24 125, and slides 129 and 136 in Dr. Almeroth's demonstratives for lack of foundation and as
 25 improper "expert" testimony. These slides offer no expert testimony at all, but rather an early
 26 closing argument for Cisco, imputing subjective motives to Arista, bolstering testimony and
 27 statements from Cisco witnesses regarding the "creativity" of command creation, and parroting
 28 snippets from emails, documents, and depositions without applying any expertise as a computer

1 scientist. It is the province of the jury to determine whether those witnesses are credible and what
 2 lay conclusions to draw from a document—not an expert. Dr. Almeroth’s associated commentary
 3 adds no technical expertise to their contents—he merely argues what the jury should conclude
 4 from them. The Court should not allow Dr. Almeroth to usurp the jury’s role in this trial by
 5 rehashing record evidence without offering any technical expertise. *See United States v.*
 6 *Freeman*, 498 F.3d 893, 903–04 (9th Cir. 2007) (an expert may not be used as a party
 7 spokesperson to provide an “additional summation” of evidence); *United States v. Binder*, 769
 8 F.2d 595, 602 (9th Cir. 1985) (no expert is permitted to vouch for or buttress the credibility of
 9 what another person has said in a deposition or document); *Oracle America v. Google*, No. 10-
 10 03561, D.I. 1803 (N.D. Cal. May 3, 2016) (Alsup, J.) (“[A]n expert should never purport to tell
 11 the jury which side’s fact witnesses are credible or vouch for whose fact scenario is correct[.]”).

12 **Almeroth Trial Exhibits:** Arista objects to trial exhibits 166, 171, 181, 183, 185, 189,
 13 193, 197, 203, 229, 278, 295, 369, 370, 374, 376, 379, 385, 390, 488, 509, 528, 545, 553, 565,
 14 567, 851, 854, 982, 1502, 1661, 2095, 2556, 2870, 3195, 3241, 3623 for the same reasons as it
 15 objects to Dr. Almeroth’s demonstrative slides above. Arista also objects to trial exhibits 376,
 16 488, 509, 565, 567, 3195, 3241, and 3623 as hearsay. Arista also objects to trial exhibit 4789 as
 17 an improper summary exhibit, for the same reasons raised at the morning argument on Nov. 29.
 18 Finally, Arista objects to summary trial exhibits 4794, 4795, 4796, 4797, 4799, 4800, and 4803 as
 19 improper trial summary exhibits due to argumentative, misleading, and inaccurate content.

20 **TX 3605:** Cisco’s Exhibit 3605 purports to be a placeholder for all of the millions of lines
 21 of source code that Cisco made available to Arista during the discovery period across all of its
 22 different operating system versions. Arista objects to Exhibit 3605 due to the proposed witness’s
 23 lack of foundation under Rule 602. As a member of Cisco’s legal department whose employment
 24 at the company only dates back to 2004, Mr. Lang lacks the necessary personal knowledge to
 25 testify on massive amounts of source code. *See Ex. C (Lang Depo.)* at 13:8-9; 20:4-23; 23:25-
 26 24:10; 54:3-23. Further, even if Mr. Lang could authenticate the entire exhibit (which he cannot),
 27 Arista objects to the manner in which it was disclosed. The parties previously agreed to put in
 28 “placeholder” exhibits for their source code, with the understanding that the parties would later

1 identify discrete excerpts of code as needed for certain trial witnesses. Neither side suggested
 2 that these generic exhibits would be disclosed in their entirety and then entered into evidence.
 3 Further, Cisco failed to timely disclose Exhibit 3605 pursuant to the parties' agreement.

4 **TX No. 4803:** Arista also objects to the introduction of Exhibit 4803 through Mr. Lang
 5 due to lack of foundation and prejudice to Arista. Exhibit 4803 consists of the entirety of Cisco's
 6 deposited copyright applications, source code, and documentation, totaling over 1,000 separate
 7 documents. Mr. Lang's role at Cisco is mostly legal and he lacks the technical knowledge and
 8 familiarity to testify as to the contents of the exhibit as a whole. *See id.* Cisco's failure to identify
 9 a specific portion of Exhibit 4803 it intends to use with Mr. Lang is highly prejudicial to Arista,
 10 given the limited time available to evaluate the extensive scope of the exhibit. Arista does not
 11 object to Exhibit 4803 to the extent Cisco intends to have Mr. Lang testify that the documents
 12 were deposited with the copyright office and puts all of the deposited material into evidence.

13 **TX Nos. 494, 504, 4327, 4424, 4673, 4674, 159:** Arista objects to the aforementioned
 14 exhibits, which constitute inadmissible hearsay under Rule 801.

15 **TX Nos. 698, 700, 991, 4424, 4673, 4674, 159:** Arista objects to these exhibits due to the
 16 proposed witness' lack of foundation under Rule 602.

17 Dated: November 29, 2016

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 20 By: /s/ Robert A. Van Nest

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